

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 6386 of 1983

For Approval and Signature:

Hon'ble MR.JUSTICE S.K.KESHOTE

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1. Whether Reporters of Local Papers may be allowed to see the judgements? Yes.
2. To be referred to the Reporter or not? Yes.

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3. Whether Their Lordships wish to see the fair copy of the judgement? No.
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? No.
5. Whether it is to be circulated to the Civil Judge? No.

SMT PRATIMABEN JAGDISHBHAI SHAH

Versus

ASHOK CHAVLA

Appearance:

MISS MINAKSHIMEHTA FOR MR AKSHAY H MEHTA for Petitioner
MR VB GARANIA, for respondents.

CORAM : MR.JUSTICE S.K.KESHOTE

Date of decision: 13/12/96

ORAL JUDGEMENT

Heard learned counsel for the parties and perused Special Civil Application. The facts of the case in brief are that -

Part of the land of Survey No.587, admeasuring 1827 sq.mtrs. situated at village Ataladara, District

Vadodara was allotted to Milkiatsinh Narayansing vide order dated 21-3-72 for industrial purpose, by the Collector of the District concerned subject to fulfillment of the conditions as laid down in the order of allotment. Two of the conditions are material for the disposal of this case which are (i) he shall pay Rs.22,825/-, the amount two and half times more of assessment, of occupancy rights and (ii) new tenure condition. First condition has to be complied with within one month from the date of receipt of the order of allotment. It is not in dispute between the parties that the allottee has no right to transfer the land to third person without prior sanction of the Allotting Authority.

2. The allottee has transferred the land in question to the petitioner in the year 1973 on rent of Rs. 700/p.m. which fact is also not in dispute between the parties. As the first condition was not complied with a notice was given by the competent authority to the allottee, in the year 1981 for cancellation of the allotment. It is also not in dispute, that in response to that notice the original allottee has not appeared. But the petitioner has appeared and was heard in those proceedings and allotment came to be cancelled for violation of first condition and other condition of transferring of the land without prior approval of the competent authority. Against the order of cancellation of allotment of the demised plot the petitioner preferred an appeal before the State Government but that too was also dismissed on the ground of limitation though the authority has also gone on the merits of the matter. Hence this Special Civil Application.

3. Reply to the Special Civil Application has been filed by the respondents. The petitioner has come up with the case in Special Civil Application that after taking the aforesaid land from the allottee she has started industry thereon in the name and style of Saral Rolling Shutters and is manufacturing rolling shutters. The petitioner has started the factory in the year 1973. The petitioner installed machinery worth of Rs. 2,00,000/- and has further incurred about Rs.30,000/- to Rs. 40,000/- in construction of the building of the factory. The petitioner has employed 7 to 8 persons in the factory. The aforesaid facts have not specifically been disputed by the respondents in the reply. In para 6 of the reply the respondents have come with the case that

"It is not admitted that the petitioner has installed machinery worth Rs. 2 lakhs on the land in question or has put up construction at a

cost of Rs.30,000/to Rs.40,000/-. I submit that without making any inquiry as to title of the land in question the petitioner had taken possession of the said land."

4. From these facts it is very difficult to infer that the petitioner has not raised construction of the factory and has not started rolling shutters manufacturing business. In para 8 of the reply the respondents stated,

"I submit that as the respondents have no information about the business of the petitioner the averments pertaining to the orders which are pending with the petitioner are not admitted. I submit that the averments made in this para are wholly irrelevant without admitting correctness thereof."

5. In para 5 of Special Civil Application the petitioner has reiterated the same averments which have been made in para 2 of Special Civil Application. In addition to that, further averments are made by the petitioner that the petitioner has on hand orders worth Rs.30,000/to Rs.40,000/- and the petitioner has purchased requisite raw materials for fulfilling the said orders. There are sufficient pleadings of the parties to hold that the averments made therein by the petitioner are correct. There is yet another reason which goes in favour of the petitioner. The land has been allotted to Malkiatsinh, original allottee, for industrial purpose. The land appears to have been earmarked for industrial purpose and transfer of the land could and should have been done for industrial purpose. Notice has been given in the year 1981 to the original allottee for cancellation of allotment. Notice has also been given to the petitioner, copy of which is annexure 'A'. This notice was of the Collector, District Vadodara. In this notice it is admitted that the petitioner is in occupation of the land in dispute. In the aforesaid notice it is not mentioned that the petitioner has not put the land in use for the industrial purposes. In para 4 of the reply it is stated that the notice u/s 202 of the Bombay Land Revenue Code was issued to the petitioner for handing over possession of the land in question to the Collector. In pursuance of the said notice Dy. Collector, Vadodara had gone to take possession of the land where the husband of the petitioner prayed for more time for handing over possession of the land as the raw materials and other stock belonging to the petitioner were stored thereon. It has further been stated that as

per the request of the petitioner's husband, who was Manager of the factory, run by the petitioner some time has been granted for handing over possession of the land in question. Then the respondents have given reference to the Civil Suit filed by the petitioner in the Civil Court which was ultimately withdrawn. These facts, which are admitted by the respondents, go in favour of the petitioner and the respondents are unable to show and establish that the petitioner is not using the land for doing her business.

6. The petitioner when failed to get any favourable order from the Civil Court, in the Civil suit against the respondents, against her dispossession from the land in question, she approached this Court and this Court protected her by granting interim relief. So, resultant position is that the petitioner has entered into possession of the land in the year 1973 and the functionaries, officers and employees of the respondent State have not raised any objection, for the reasons best known to it, against the petitioner to raise construction of the factory and further no action has been taken to stop her from doing her business thereon. Not only this, the functionaries, officers and employees of the State allowed the petitioner to settle her business and much worst, no action has been taken, whatsoever, against the original allottee of the land for cancellation of allotment till 1980. Delay in taking action for cancellation of allotment in favour of the original allottee is of 9 years and of 8 years after the petitioner has entered in occupation of the said land. Learned Counsel for the respondent is unable to justify this delay in taking action in the matter of cancellation of allotment made by the Collector in favour of the original allottee. It is really shocking affairs in the State that its functionaries, officers and employees first permit the people to raise construction illegally, to settle factory and to start the business and it makes complaints and pursue the competent authority to take necessary action there after. Truly speaking the action should have been taken against the defaulting officers and employees and they should have been put to task. But the functionaries, officers and employees of the State, who are under obligation to check that nobody has entered into illegal possession of land, makes illegal construction thereon and establishes business have not been taken to task. It is a fact, the notice of which can be taken, that without connivance of the functionaries, officers, and employees of the Department of the State nobody could dare to enter into illegal possession and raise illegal construction of factory and

start business. In fact, the functionaries, officers and employees want that the people should do illegal thing as it benefits them. That is how when, raids by ACD, CBI and Income Tax Department are made at the residence of the officers and employees cash and properties of worth crores of rupees are found with them. The very fact that disproportionate assets are found at the residence or lockers of the officers and employees of the Government, it gives clue that it is earned by illegal means or it is an amount of illegal gratification.

7. This Court has protected the petitioner for all these years and so the petitioner is there on land for last 23 years. From 1973 to 1983 the petitioner remained in possession of the land at the mercy of the officers and employees of the Government and then for all these years under the interim order of this Court. Learned Counsel for the petitioner has tried to project before this Court that the petitioner is an innocent and bona fide person who entered into agreement for the land in dispute with the original allottee. Even if this contention is not accepted, the fact remains that the petitioner has entered in possession of the land in the year 1973 and raised construction of the factory thereon and she started business and now settled there. For running business it cannot be disputed that man power is required, may or may not be to the extent of 7 to 8 persons in number. So the factory has already been come up on the land. The petitioner would have certainly incurred heavy amount in construction, machinery and raw material etc. Above that, the business would have settled there by now.

8. As stated earlier, cancellation of allotment has been made on the ground of non-payment of Rs.22825/- and the land has been transferred without prior sanction of the competent authority. The petitioner has made request before the Collector way back in the year 1982 that prevailing market rate of the land may be taken and the petitioner's possession may be regularised. Nothing is brought on record by the petitioner, how this prayer of the petitioner has been dealt with by the Collector.

9. The amount of Rs.22,825/- had to be paid within one month by the original allottee i.e. on or before 20-3-1972. Looking to the fact that the petitioner has entered into possession and delayed action has been taken by the respondents for cancellation of allotment and the officers and employees of the respondents allowed the petitioner to settle in business, the interest of justice will meet in case the petitioner is directed to pay the aforesaid amount of Rs.22,825/- together with reasonable

rate of interest. Learned Counsel for the petitioner very fairly submitted that the petitioner is ready and willing to pay the aforesaid amount together with interest at the rate as ordered by this Court. Learned Counsel for the respondents stated that the petitioner may be directed to pay interest at the rate of 24% p.a. which seems to be on higher side. We cannot lose sight of the fact that rate of Bank interest would not be of much high in seventies or eighties. It is appropriate that the petitioner shall pay interest on the amount Rs.22,825/- at the rate of 12% p.a. from 1-4-1972 to 31-12-1983 and at the rate of 18% p.a. on the principal amount from 1-1-1984 till the date of payment thereof.

10. The next question does arise for consideration, is of non-compliance of other term of allotment i.e. transfer of land to the petitioner by the original allottee without prior sanction of the competent authority. Nobody disputes that transfer of land was permissible though with approval of the competent authority. The land in question is to be used for industrial purpose and the petitioner is using the same for industrial purpose. When Court asked to learned counsel for the respondents that when transfer is to be approved then what conditions are to be complied with by the transferee, but he has failed to give any reply to the same.

11. There may be condition of payment of some premium for transfer in form of fee etc. At one stage I thought to send the matter back to the Collector to pass appropriate order for regularisation of the land in favour of the petitioner subject to the payment of reasonable amount in form of premium or transfer fee, but on second thought as well as on the concession of the Counsel that whatever amount fixed by the Court in this head the petitioner will pay and matter is pending here for last 13 years, the matter has to be decided finally.

12. Taking into consideration totality of facts of the case it is in the interest of justice that the petitioner should be allowed to continue in possession of the land and possession of the petitioner may be regularised though subject to the conditions that the petitioner shall pay amount of Rs.22,825/- together with interest as the rate stated earlier and Rs.25,000/- by way of premium of transfer of land. This payment may be made by the petitioner within a period of three months from the date of receipt of writ of this order. In case the petitioner makes default in payment of any of the amounts aforesaid, within the time as granted by this

Court, this Special Civil Application shall stand dismissed automatically.

13. The petition succeeds and same is allowed. Rule is made absolute in the aforesaid terms, with no order as to costs.

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